

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Paul S. Keim *et al.*  
Application No. : 10/531,159  
PCT No. : PCT/US03/32887  
Int. Filing Date : 14 October 2003  
Priority Date : 11 October 2002  
Title : *MOLECULAR SIGNATURES AND ASSAY FOR  
FLUOROQUINOLINE RESISTANCE IN BACILLUS  
ANTHRACIS*  
Attorney Docket No. : 112624.00029

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**RENEWED PETITION UNDER 37 C.F.R. § 1.181**

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Commissioner for Patents  
Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313

Dear Sir:

Applicants hereby petition the Office of the Director under 37 C.F.R. 1.181 to invoke its supervisory authority. Applicants wish to correct the filing date accorded to U.S. patent application number 10/531,159 ('159 application), filed by Keim *et al.* Applicants submit that the correct filing date is April 11, 2005.

The present petition is Applicants' fourth attempt to address this matter. Applicants have filed two previous petitions under 37 C.F.R. 1.10(d) to correct the filing date accorded to the '159 application. Both prior 1.10(d) petitions have been dismissed by the USPTO. Applicants further filed a petition under 37 C.F.R. 1.181, dated August 21, 2006, to the Office of the Director to invoke its supervisory authority. This renewed petition expressly addresses the issues raised in the USPTO's prior dismissals. Applicants maintain that the USPTO has acted arbitrarily in denying Applicants' prior petitions, and seeks to invoke the supervisory authority of the Office of the Director to reconsider the relevant facts and new evidence in support of its position.

I. Background

On April 11, 2005, Applicants filed by Express Mail a U.S. patent application as a nationalization of PCT patent application PCT/US2003/032887, filed October 14, 2003, which claimed priority of U.S. provisional application number 60/417,843, filed October 11, 2002. The U.S. provisional application is believed to have continuous pendency with the PCT application because October 11, 2003, fell on Saturday and the next regular business day for the USPTO was October 14, 2003. The Certificate of Mailing for the U.S. patent application bearing Express Mail No. EV667329735US and executed on April 11, 2005, and accompanying transmittal documents addressed to the United States Receiving Office, are provided in attached Exhibit A.

Applicants deposited the Express Mail package containing the U.S. patent application directly with employees of the U.S. Postal Service (USPS) on April 11, 2005, under Express Mail Label No. EV667329735US. The Express Mail package was pre-addressed to: Mail Stop: PCT RO/US, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, see attached Exhibit B.

On April 26, 2005, Applicants received the return postcard with the assigned serial number for the U.S. patent application. On the return postcard, the accorded U.S. filing date was given as April 12, 2005, see attached Exhibit C.

Upon close inspection, Applicants discovered that the USPS had written the date accepted on the Express Mail receipt as April 12, 2005, see attached Exhibit B. Further investigation, including interviews with all persons involved in handling the Express Mail package, and discussions with the USPS, revealed that the USPS had made a mistake as to filling in the "date accepted" field of the Express Mail receipt. In fact, the Express Mail package was deposited directly with USPS employees on April 11, 2005. The subject patent application should be entitled to receive that same date as its filing date.

In support of Applicants' petition, the following facts are offered as evidence of the events as they transpired. Express mail packages are picked up once each business day from the

offices of Quarles & Brady (law firm representing the assignee of record) by Intellequick courier service, who then transports the packages to the USPS. The affidavits of Maritza O'Neill and William Bilyk confirm that Express Mail EV667329735US containing the subject national stage patent application was placed in the Intellequick courier pick-up bin in the mail room of Quarles & Brady by about 4:30 p.m. on April 11, 2005. The affidavit of John Mitchell states the Express Mail was indeed picked up from the Intellequick courier pick-up bin in the Quarles & Brady mail room at 6:07 p.m. on April 11th and taken to the USPS on the same day, see attached Exhibit D. These affidavits were made under oath and penalty of perjury and should be accepted as accurate and reliable statements.

Applicants also offer additional corroborating evidence of the April 11th filing date in compliance with Rule 1.10(d). Intellequick maintains a courier log with time and date entries for each pick-up and delivery in its normal course of business. As recorded in the courier log, the Express Mail was picked up from Quarles & Brady at 6:07 p.m. and deposited with the USPS at 6:56 p.m. on April 11, 2005, see attached Exhibit E. The courier log is an independent and contemporaneous record, made within one business day of the deposit in question, and supported by the above affidavits, that the Express Mail package was in fact taken to the USPS at the indicated time.

As further evidence that Express Mail EV667329735US was deposited with the USPS on April 11, 2005, note that the USPS records show Express Mail EV667329735US as logged into its tracking system as of 5:05 p.m. on April 12, 2005, see attached Exhibit F. As recorded in the Intellequick courier log, the next Express Mail pick-up by Intellequick from the offices of Quarles & Brady did not occur until 6:08 p.m. on April 12, 2005. This following delivery was made with the USPS at 6:58 p.m. on April 12, 2005. Therefore, the USPS was indisputably in possession of the Express Mail EV667329735US before the next delivery by Intellequick on April 12, 2005. Based on the courier logs, which were made contemporaneously with the deposit in question, and the time and date entries in the USPS Express Mail tracking system, the Express Mail package could not have been made on April 12th and was in fact deposited with

USPS employees on April 11, 2005. See also Express Mail Certificate executed on April 11, 2005, attached as Exhibit A.

Based on reviewing the same information as explained above, the USPS has confirmed and acknowledged in writing that “this mailing was dropped off at our Main Post Office on April 11, 2005, not April 12, as indicated on the Express Mail Label,” see attached Exhibit G.

## II. Prior Petitions

On June 9, 2005, Applicants filed a first petition under 37 C.F.R. 1.10(d) requesting the filing date be corrected to April 11, 2005. On September 27, 2005, the USPTO dismissed the petition stating that Applicants had failed to provide corroborating evidence, see attached Exhibit H.

On October 19, 2005, the ‘159 application became abandoned.

Applicants disagreed with the dismissal of the first petition and filed a second petition under 37 C.F.R. 1.10(d) on March 3, 2006, to further explain their position. The second petition was dismissed on June 21, 2006, for similar reasons as the first petition, see attached Exhibit I.

Applicants disagreed with the dismissal of the second petition and filed a third petition under 37 C.F.R. 1.181 on August 21, 2006, to invoke the supervisory authority of the Office of the Director. The 1.181 petition was dismissed on December 6, 2006, see attached Exhibit J.

## III. Arguments for Further Consideration

In considering Applicants’ August 21, 2006 petition, Applicants believe that the USPTO has again failed to consider the totality of the evidence. According to Rule 1.10(d)(3), the Examiner should be applying the standard that:

“The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the ‘Express Mail Post Office to Addressee’ service prior to the last scheduled pickup for that

day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

Applicants maintain the necessary showing for the requested filing date (April 11, 2005) has been made, but the Examiner has improperly discounted the evidence. Accordingly, Applicants file this renewed petition under 37 C.F.R. 1.181 to the Office of the Director.

Applicants steadfastly maintain that the Express Mail EV667329735US package containing the U.S. patent application as a nationalization of PCT patent application PCT/US2003/032887 was in fact deposited with the USPS on April 11, 2005. While Applicants acknowledge that the date accepted on the Express Mail receipt is dated April 12, 2005, all available evidence establishes that the April 12th date is incorrect.

Applicants will now address the points raised by the Examiner in the December 6, 2006, dismissal of the 1.181 petition. On page 4 of the dismissal, the Examiner discusses the submitted affidavits and states in part that:

"However, the affidavit was made six weeks after the date in question. There is nothing in the affidavit that suggests that Maritza O'Neill has any specific remembrance or recollection of that particular package. The affidavit appears to rely on the fact that the Certificate of Mailing was signed on that date by her. However, this Certificate of Mailing only establishes intent to mail it on that date, not that it was actually mailed on that date."

Applicants believe that the Examiner has taken an improper and unreasonable interpretation of Ms. O'Neill's affidavit. The fact that the affidavit was made six weeks after the date in question arises from the fact that Applicants did not become aware of the problem until the postcard was returned with the wrong filing date. Applicants then exercised due diligence to investigate the facts, including talking to all parties involved and addressing the issue with the USPS. The affidavits were completed by each individual only after all facts were known and understood and Applicants had decided on the proper corrective action. In the normal course of business, six weeks is not an unreasonable time for that entire process to transpire. Considering the importance of the matter and the time spent with the investigation, which Ms. O'Neill was

actively involved, the notion that her memory would have faded in those six weeks is unreasonable.

The Examiner states (1) there is nothing in the affidavit that suggests that Maritza O'Neill has any specific remembrance or recollection of that particular package and (2) that affidavit appears to rely on the fact that the Certificate of Mailing was signed on that date by Ms. O'Neill. Applicants disagree with the Examiner's assessment of the affidavit. Ms. O'Neill's affidavit expressly states that "the statements in this affidavit are true and based on my personal knowledge." The affidavit then goes into great detail in paragraphs 5-7 as to exactly what happened during her custody of this particular package (receiving patent application, completing transmittal documents, signing Certificate of Mailing, sealing Express Mail package, delivering the package to William Bilyk). For the Examiner to take the position that there is nothing in the affidavit that suggests that Maritza O'Neill had a specific recollection of the Express Mail package in question is inaccurate and an unreasonable interpretation of the affidavit.

On page 4, the December 6 dismissal further states in part that:

"The affidavit of William Bilyk merely states that on April 11, 2005 and April 12, 2005, all packages in his custody were picked up by John Mitchell between 6:00 and 6:30 p.m. Neither the affidavit of William Bilyk nor the affidavit by John Mitchell specifically refer to Express Mail mailing label number EV667329735US. Rather, these affidavits simply confirm that each of these persons performed their usual duties on April 11, 2005 and April 12, 2005."

Applicants agree with the Examiner on the above points but arrive at a different conclusion. As the Examiner acknowledges, the affidavits clearly support that on the dates in question "all packages in his custody were picked up by John Mitchell between 6:00 and 6:30 p.m." and further that "each of these persons performed their usual duties on April 11, 2005 and April 12, 2005." This is precisely Applicants' point. Given the fact that Ms. O'Neill delivered the package in question to Mr. Bilyk, and given the fact that Mr. Bilyk placed the package in the pick-up bin, and given the fact that Mr. Mitchell picked up all packages after the time that the package in question was placed in the pick-up bin and then dutifully delivered the package to the USPS on April 11th, and given the fact that each of these persons performed their usual duties,

and given all of these facts have been attested to under oath in sworn affidavits, then the only reasonable conclusion is that the Express Mail package was delivered to the USPS on April 11, 2005.

Mr. Bilyk and Mr. Mitchell did not expressly refer to Express Mail Label EV667329735US because the Express Mail packages are not individually logged-in and logged-out of the Quarles & Brady mail room. Mr. Bilyk and Mr. Mitchell attested only to facts that are true and supportable.

On pages 4-5, the December 6 dismissal further states that:

“Applicants also urge that the courier log is an independent and contemporaneous record, made within one business day of the deposit in question, that the Express Mail was in fact taken to the U.S. Post Office at the indicated time. However, the log does not contain any Express Mail numbers. One simply cannot determine from the log that the correspondence having Express Mail mailing number EV667329735US was even entered in the log. Moreover, it is not clear that the courier log was made within one business day of the deposit in question. The affidavit of John Mitchell states that he “maintains a daily manifest of all pickups and deliveries, including times and locations” but doesn’t say when the entries in the log are made. The log does not seem to be in chronological order, it raises questions as to when the entries were made. If the entries were made before the actual pickup or actual delivery, then it does not satisfy 37 CFR 1.10(d)(3).”

The Examiner raises questions as to the sufficiency and accuracy of the courier log. Applicants maintain that the courier log is a contemporaneous business record made within one day of the deposit in question. The Examiner states that the affidavit of John Mitchell declares that he maintains a daily manifest of all pickups and deliveries, including times and locations, but doesn’t say when the entries in the log are made. The Examiner misconstrues the affidavit. The courier logs are dated April 11 and April 12, 2005, respectively, see attached Exhibit E. In paragraphs 8-11 of his affidavit, Mr. Mitchell explains the relevant entries in the manifest. In paragraph 12, Mr. Mitchell states that “the above noted entries in my manifest were made by my hand on April 11 and April 12, 2005.” Mr. Mitchell’s affidavit clearly states when the entries in the log are made. Again, Applicants believe that the Examiner is not properly interpreting the affidavit.

The Examiner is correct that the courier log does not contain the Express Mail mailing label number EV667329735US. To be frank, Rule 1.10(d)(3) does not require that specific showing. Nonetheless, Applicants maintain that the necessary showing has been made herein that the requested filing date was the date the correspondence was deposited with the USPS prior to the last scheduled pickup for that day. Applicants' showing is corroborated by evidence from the USPS (USPS official letter, Express Mail tracking record, and erroneous handwritten Express mail receipt) and further by evidence that came into being after deposit and within one business day of the deposit of the correspondence in the USPS (courier log with supporting affidavits) in compliance with Rule 1.10(d)(3).

As for questioning the accuracy of the courier logs, there is a perfectly logical explanation for the courier log to have entries that are not in "chronological order." Applicants have attached as Exhibit K a supplemental affidavit of Mr. Mitchell stating that it was his normal practice to make a partial entry in the log book upon receiving notification that a pickup needed to be made. Some pickups were routine, some pickups were special requests, depending on the needs of the client. Mr. Mitchell routinely made partial entries (client name and location only) in the log book upon receiving directions to make a pickup, i.e., prior to the actual pickup. Mr. Mitchell then traveled to the various client business sites, picked up the packages, and at that time entered next to the client names the corresponding times when each pickup was actually made. If Mr. Mitchell had determined that it was more efficient or otherwise necessary to make pickups in an order different than was initially written in the log, then he did so and still entered the actual time in the courier log as the pickup was made. That is, the time column of the log was not entered with the initial client name entry, but rather when the pickup was actually made. Thus, the initial partial entry (client name only) acted as a note of each required pickup that needed to be made and the time portion was entered later when the pickup was actually made. If the pickups were made in a different order than initially entered, then the pickup times would indeed most likely be out of "chronological order." However, what is important is that the time entries were made in real-time with the pickups, notwithstanding the ordering of client entries in the courier log. The ordering of the client entries initiated prior to the actual pickups does not bring into question the reliability or accuracy of the courier log. The supplemental affidavit was



not previously provided because the Examiner is raising new issues, which could not have been reasonably anticipated by Applicants.

The Examiner has presented nothing to challenge the authenticity or accuracy of the courier log and must accept it as a contemporaneous business record made within one day of the deposit in question. The courier log is a reliable record for what it contains.

On page 5, the December 6 dismissal further states that:

“Applicants also urge that the fact that the USPS records show Express Mail mailing label number EV667329735US in its possession as of 5:05 p.m. on 12 April 2005 in combination with the log establishes that Express Mail mailing label number EV667329735US was deposited with the USPS on 11 April 2005. However, as noted above, the log is not a reliable record of whether a particular Express Mail mailing label number was picked up or deposited with the USPS on any particular date.”

The Examiner is dismissing out-of-hand, without proper consideration, a relevant component of Applicants’ explanation. The USPS Express Mail tracking record, as presented in Exhibit F, is undeniable; the Express Mail EV667329735US package was in the USPS tracking system as of 5:05 p.m. on April 12, 2005. The Examiner does not dispute this fact. Applicants have presented substantial evidence, in terms of contemporaneous business records and supporting affidavits, that no Express Mail deliveries from the offices of Quarles & Brady were made with the USPS on April 12, 2005, until 6:58 p.m. As discussed above, the courier log is a reliable record for what it contains and the affidavits must be given due weight for the sworn statements made therein. It does not rationally follow that the Express Mail EV667329735US package could have been delivered to the USPS on April 12, 2005. The Express Mail EV667329735US package was already in the USPS system by the April 12th delivery. The Examiner has made no logical or reasonable challenge to Applicants’ evidence. Given these facts, which Applicants maintain that the Examiner must accept, there is no reasonable conclusion other than that the Express Mail EV667329735US package was delivered to the USPS on April 11, 2005.

On page 5, the December 6 dismissal further states that:

“Applicants also urge that the letter from Melanie Thomas of the USPS satisfies 37 CFR 1.10(b)(3). The petition suggests that the letter from Melanie Thomas was based on the same evidence presented in the petition under 27 CFR 1.10(d). The petition states that “the U.S. Post Office understood and accepted the evidence and acknowledged the mistake. For the USPTO to discount an official statement from the U.S. Post office out-of-hand is improper.” However, for the reasons set forth above, the evidence is not sufficient. Thus, any conclusion based on that evidence is unreliable.”

Again, the Examiner fails to give proper consideration to another relevant component of Applicants’ undisputed evidence. The Examiner simply dismisses an official letter from an agent of the federal government, and in fact a recognized agent of the USPTO, by noting that “the evidence is not sufficient” and “any conclusion based on that evidence is unreliable.” Applicants suppose that the USPS would not agree or appreciate the Examiner’s statement. Yet, the USPTO cannot arbitrarily disregard an official statement from the USPS, its own agent, which goes to the essence of the present issue, that:

“After further review of your express mail piece number EV667329735US I have determined that this mailing was dropped off at our Main Post Office on April 11, 2005 not April 12, 2005 as indicated by the Express Mail Label.”

Ms. Thomas makes important points in her letter. First, Ms. Thomas expressly states that the USPS conducted a review the subject Express Mail EV667329735US. Second, Ms. Thomas concludes that following the review, she determined that “this mailing was dropped off at our Main Post Office on April 11, 2005 not April 12, 2005 as indicated by the Express Mail Label.” Clearly, Ms. Thomas understands the issue with the relevant package, drop-off location, and drop-off date, which is consistent with the substantial evidence presented in this petition.

The USPS has the authority to receive and handle Express Mail on behalf of the USPTO, which in turn routinely grants filing dates for patent applications based solely on the USPS acknowledgement that the Express Mail package was properly deposited with the USPS, see 37 C.F.R. 1.10(a)(1). Thus, the USPTO has effectively delegated authority to the USPS for establishing filing dates for patent applications mailed via Express Mail through its acknowledgement of the date of deposit, i.e. the date of deposit with the USPS is shown by the “date in” on the Express Mail label or other official USPS notation, see 37 C.F.R. 1.10(a)(2). In

the instant case, the USPS has acknowledged that Express Mail EV667329735US was deposited on April 11, 2005. The letter in Exhibit G is written on USPS letterhead and signed by an official USPS representative. The letter is clear as to the conclusion reached by the USPS regarding the date of deposit in question. Applicants maintain that the letter must be viewed as an official USPS notation sufficient to establish the date of deposit with USPS. Moreover, Applicants submit that Ms. Thomas's letter is corroborative evidence from the USPS, precisely as contemplated by Rule 1.10(d)(3). Without evidence to the contrary, the USPTO must accept the review and decisions of its own agent, the USPS, and cannot arbitrarily disregard that assessment.

Another fact that cannot be disputed is that the receipt for Express Mail Label EV667329735US is defacto erroneous. The USPS records show the Express Mail EV667329735US package in the USPS tracking system by 5:05 p.m. on April 12, 2005, see Exhibit F. Yet, the first step in receiving an Express Mail package is to enter the date and time accepted. The date accepted on the Express Mail Label EV667329735US is April 12, 2005; the time accepted is 19:45 (7:45 p.m.), see Exhibit B. These two statements taken together are inconsistent as the USPS cannot have a package logged into its tracking system prior to the time and date that it was initially accepted. The USPS tracking record in Exhibit F is computer time and date stamped. The "date accepted" and "time accepted" on the Express Mail Label EV667329735US were written by human hand. The valid conclusion is that the discrepancy resides with the human component, i.e., that the hand-written Express Mail receipt is erroneous and the computer-generated time and date stamp on the USPS tracking record is correct. These are official USPS records and cannot be simply dismissed by the Examiner.

What is unreliable and in fact erroneous is the receipt for the Express Mail EV667329735US showing the date accepted as April 12, 2005. The April 12th filing date cannot be correct. Yet, the USPTO has relied and continues to rely on this obviously erroneous receipt to assign the April 12th filing date for the subject patent application. The USPTO continues to deny Applicants' petitions to correct the matter. The USPTO dismisses contemporaneous business records, misconstrues affidavits, and ignores official statements by its

own agent, for reasons that Applicants cannot understand or accept. Still, the underlying error (incorrect hand-written date accepted) leading to the problem was not caused by Applicants, but rather by an agent of the USPTO. Applicants should not be caused to suffer from an error of the USPS (and effectively the USPTO).

#### IV. Conclusion

It is important for the Director to consider all of the evidence contained in this petition. Applicants maintain that the necessary showing has been made herein that the requested filing date (April 11, 2005) was the date the correspondence was deposited with the USPS prior to the last scheduled pickup for that day. Applicants' showing has been corroborated by evidence from the USPS (USPS official letter, Express Mail tracking record, and erroneous handwritten Express mail receipt) and further by evidence that came into being after deposit and within one business day of the deposit of the correspondence in the USPS (courier log with supporting affidavits) in compliance with Rule 1.10(d)(3). In spite of the multiple petitions, the Examiner continues to discount contemporaneous business records (courier logs) based on illogical and inaccurate reasoning. The Examiner still has not properly considered the affidavits submitted with the petitions, and in fact has misconstrued statements contained therein. The Examiner has ignored official records and statements by the USPS.

Applicants respectfully request the Director to consider the totality of the evidence contained in this petition. Applicants have established a chain of custody by sworn affidavits that the Express Mail package was delivered to the USPS on April 11, 2005. The affidavits support the contemporaneous business records (courier logs) which further confirm the Express Mail EV667329735US package was delivered as stated. The receipt for the Express Mail EV667329735US package, which the USPTO is presently using as the filing date of the subject patent application, has been shown to be erroneous.

Applicants have offered and continue to offer a reliable, truthful, and accurate explanation of the requisite facts. The Express Mail EV667329735US was deposited with the USPS on April 11, 2005. The independent and objective evidence contained in the courier logs

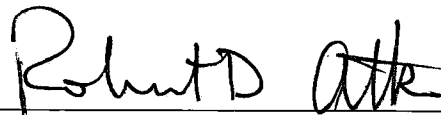
and sworn affidavits confirm this fact. The package could not have been deposited with the USPS on April 12th because the USPS had possession of the package before the April 12th delivery by Applicants' courier. The U.S. Post Office understood this reasoning and provided its official statement confirming the actual date of acceptance as April 11, 2005. Applicants believe that the totality of the evidence is sufficient, independent, and objective corroboration under Rule 10(b)(3). For the above reasons, Applicants are compelled to invoke the supervisory authority of the Director under 37 C.F.R. 1.181 to seek a proper resolution.

This petition is being filed as promptly as the circumstances and gathering of information would allow. The present patent application is of high business importance to the assignee of record. It would be unconscionable for the USPTO to continue to rely on an erroneous receipt (Express Mail filing receipt dated April 12, 2005), discount Applicants' evidence, ignore statements of its own agent, and deny Applicants a fair examination of its patent application. For all of the foregoing reasons and based on the supporting documentation, Applicants respectfully request the Director to grant this petition to accord U.S. Patent Application No. 10/531,159 a filing date of April 11, 2005. Applicants further request that the '159 patent application be withdrawn from abandonment and submitted for examination before the USPTO.

Respectfully submitted,  
**QUARLES & BRADY STREICH LANG LLP**

February 6, 2007

By: \_\_\_\_\_



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# **EXHIBIT A**

**EXPRESS MAIL CERTIFICATE: EV667329735US**

I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Signature  
and Deposit: April 11, 2005

By:

(Signature of person depositing mail)

MARITZA O'NEILL

**CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. 1.10**

Applicant : Paul S. Keim *et al.*  
Serial No. : To be assigned  
Date of Filing : April 11, 2005  
Title : *MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*  
Art Unit : To be assigned  
Examiner : To be assigned  
Docket No. : 112624.00029

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Alexandria, VA 22313-1450

**Type of Filing:**

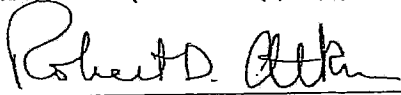
- 1) Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (2 pages) (in duplicate)
- 2) Preliminary Amendment (3 pages)
- 3) Application Data Sheet (3 pages)
- 4) Executed Declaration (4 pages)
- 5) Executed Power of Attorney (4)
- 6) Assignments (4), plus Recordation Form Cover Sheet
- 7) Verification Statement (1)
- 8) Paper copy of Sequence Listing (28 pages)
- 9) Diskette with copy of Sequence Listing
- 10) Return postcard

<b>TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371</b>		ATTORNEY'S DOCKET NUMBER <b>112624.00029</b>
INTERNATIONAL APPLICATION NO. <b>PCT/US2003/032887</b>		U.S. APPLICATION NO. (If known, see 37 CFR 1.5) <b>To be assigned</b>
INTERNATIONAL FILING DATE <b>14 October 2003</b>		PRIORITY DATE CLAIMED <b>11 October 2002</b>
TITLE OF INVENTION <b>MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE RESISTANCE IN BACILLUS ANTHRACIS</b>		
APPLICANT(S) FOR DO/EO/US <b>Paul S. Keim, Talima Pearson, Lance Price, and Joseph D. Busch</b>		
Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:		
<ol style="list-style-type: none"> <li>1. <input checked="" type="checkbox"/> This is a <b>FIRST</b> submission of items concerning a submission under 35 U.S.C. 371.</li> <li>2. <input type="checkbox"/> This is a <b>SECOND</b> or <b>SUBSEQUENT</b> submission of items concerning a submission under 35 U.S.C. 371.</li> <li>3. <input checked="" type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371(f)). The submission must include items (5), (6), (9) and (21) indicated below.</li> <li>4. <input checked="" type="checkbox"/> The US has been elected (Article 31).</li> <li>5. <input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371(c)(2))               <ol style="list-style-type: none"> <li>a. <input type="checkbox"/> is attached hereto (required only if not communicated by the International Bureau).</li> <li>b. <input type="checkbox"/> has been communicated by the International Bureau.</li> <li>c. <input checked="" type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US).</li> </ol> </li> <li>6. <input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)).               <ol style="list-style-type: none"> <li>a. <input type="checkbox"/> is attached hereto.</li> <li>b. <input type="checkbox"/> has been previously submitted under 35 U.S.C. 154(d)(4).</li> </ol> </li> <li>7. <input checked="" type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))               <ol style="list-style-type: none"> <li>a. <input type="checkbox"/> are attached hereto (required only if not communicated by the International Bureau).</li> <li>b. <input type="checkbox"/> have been communicated by the International Bureau.</li> <li>c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired.</li> <li>d. <input checked="" type="checkbox"/> have not been made and will not be made.</li> </ol> </li> <li>8. <input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).</li> <li>9. <input checked="" type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).</li> <li>10. <input type="checkbox"/> An English language translation of the annexes of the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).</li> </ol>		
Items 11 to 20 below concern document(s) or information included:		
<ol style="list-style-type: none"> <li>11. <input type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98.</li> <li>12. <input checked="" type="checkbox"/> An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.</li> <li>13. <input checked="" type="checkbox"/> A preliminary amendment.</li> <li>14. <input checked="" type="checkbox"/> An Application Data Sheet under 37 CFR 1.76.</li> <li>15. <input type="checkbox"/> A substitute specification.</li> <li>16. <input checked="" type="checkbox"/> A power of attorney and/or change of address letter.</li> <li>17. <input checked="" type="checkbox"/> A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 37 CFR 1.821-1.825.</li> <li>18. <input type="checkbox"/> A second copy of the published International Application under 35 U.S.C. 154(d)(4).</li> <li>19. <input type="checkbox"/> A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4).</li> <li>20. <input checked="" type="checkbox"/> Other items or information: <b>Verification Statement and Return postcard.</b></li> </ol>		

This collection of information is required by 37 CFR 1.414 and 1.491-1.492. The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 15 minutes to complete, including gathering information, preparing, and submitting the completed form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

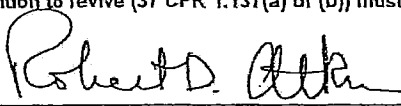
U.S. APPLICATION NO. (if known, see 37 CFR 1.5)		INTERNATIONAL APPLICATION NO.		ATTORNEY'S DOCKET NUMBER	
To be assigned		PCT/US2003/032887		112624.00029	
The following fees have been submitted				CALCULATIONS PTO USE ONLY	
21. <input checked="" type="checkbox"/> Basic national fee..... \$300				\$ 300.00	
22. <input checked="" type="checkbox"/> Examination fee If international preliminary examination report prepared by USPTO and all claims satisfy provisions of PCT Article 33(1)-(4)..... \$100 All other situations..... \$200				\$ 200.00	
23. <input checked="" type="checkbox"/> Search fee Search fee (37 CFR 1.445(a)(2)) has been paid on the international application to the USPTO as an International Searching Authority..... \$100 International Search Report prepared and provided to the Office..... \$400 All other situations..... \$500				\$ 100.00	
TOTAL OF 21, 22 and 23 =				\$ 600.00	
<input type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing or computer program listing filed in an electronic medium). The fee is \$250 for each additional 50 sheets of paper or fraction thereof.					
Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof (round up to a whole number)	RATE		
- 100 =	/50 =		x \$250	\$ 0.00	
Surcharge of \$130.00 for furnishing the oath or declaration later than 30 months from the earliest claimed priority date (37 CFR 1.492(e)).				\$ 0.00	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE	\$	
Total claims	22 - 20 =	2	x \$ 50	\$ 100.00	
Independent claims	3 - 3 =	0	x \$200	\$ 0.00	
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ \$360	\$ 0.00	
TOTAL OF ABOVE CALCULATIONS =				\$ 700.00	
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Fees above are reduced by 1/2.				350.00	
SUBTOTAL =				\$ 350.00	
Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(f)).				\$ 0.00	
TOTAL NATIONAL FEE =				\$ 350	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property				\$ 40.00	
TOTAL FEES ENCLOSED =				\$ 390.00	
				Amount to be refunded:	\$
				Amount to be charged:	\$ 390.00
<p>a. <input type="checkbox"/> A check in the amount of \$ _____ to cover the above fees is enclosed.</p> <p>b. <input checked="" type="checkbox"/> Please charge my Deposit Account No. <u>17-0055</u> in the amount of \$ <u>390.00</u> to cover the above fees. A duplicate copy of this sheet is enclosed.</p> <p>c. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. <u>17-0055</u>. A duplicate copy of this sheet is enclosed.</p> <p>d. <input type="checkbox"/> Fees are to be charged to a credit card. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p>					
NOTE: Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the International Application to pending status.					
SEND ALL CORRESPONDENCE TO:					
Robert D. Atkins QUARLES & BRADY STREICH LANG LLP One Renaissance Square Two North Central Avenue Phoenix, AZ 85004					
				 SIGNATURE Robert D. Atkins NAME 34,288 REGISTRATION NUMBER	

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371</b>		ATTORNEY'S DOCKET NUMBER 112624.00029
		U.S. APPLICATION NO. (if known, see 37 CFR 1.5) To be assigned
INTERNATIONAL APPLICATION NO. PCT/US2003/032887	INTERNATIONAL FILING DATE 14 October 2003	PRIORITY DATE CLAIMED 11 October 2002
TITLE OF INVENTION MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE RESISTANCE IN BACILLUS ANTHRACIS		
APPLICANT(S) FOR DO/EO/US Paul S. Keim, Talima Pearson, Lance Price, and Joseph D. Busch		
Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:		
1. <input checked="" type="checkbox"/> This is a FIRST submission of items concerning a submission under 35 U.S.C. 371. 2. <input type="checkbox"/> This is a SECOND or SUBSEQUENT submission of items concerning a submission under 35 U.S.C. 371. 3. <input checked="" type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371(f)). The submission must include items (5), (6), (9) and (21) indicated below. 4. <input checked="" type="checkbox"/> The US has been elected (Article 31). 5. <input checked="" type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371(c)(2)) a. <input type="checkbox"/> is attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> has been communicated by the International Bureau. c. <input checked="" type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US). 6. <input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)). a. <input type="checkbox"/> is attached hereto. b. <input type="checkbox"/> has been previously submitted under 35 U.S.C. 154(d)(4). 7. <input checked="" type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3)) a. <input type="checkbox"/> are attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> have been communicated by the International Bureau. c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired. d. <input checked="" type="checkbox"/> have not been made and will not be made. 8. <input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)). 9. <input checked="" type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)). 10. <input type="checkbox"/> An English language translation of the annexes of the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).  Items 11 to 20 below concern document(s) or information included: 11. <input type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98. 12. <input checked="" type="checkbox"/> An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included. 13. <input checked="" type="checkbox"/> A preliminary amendment. 14. <input checked="" type="checkbox"/> An Application Data Sheet under 37 CFR 1.76. 15. <input type="checkbox"/> A substitute specification. 16. <input checked="" type="checkbox"/> A power of attorney and/or change of address letter. 17. <input checked="" type="checkbox"/> A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 37 CFR 1.821- 1.825. 18. <input type="checkbox"/> A second copy of the published International Application under 35 U.S.C. 154(d)(4). 19. <input type="checkbox"/> A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4). 20. <input checked="" type="checkbox"/> Other items or information: Verification Statement and Return postcard.		

This collection of information is required by 37 CFR 1.414 and 1.491-1.492. The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 15 minutes to complete, including gathering information, preparing, and submitting the completed form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

U.S. APPLICATION NO. (if known, see 37 CFR 1.5)		INTERNATIONAL APPLICATION NO.		ATTORNEY'S DOCKET NUMBER	
To be assigned		PCT/US2003/032887		112624.00029	
The following fees have been submitted				CALCULATIONS PTO USE ONLY	
21. <input checked="" type="checkbox"/> Basic national fee..... \$300				\$ 300.00	
22. <input checked="" type="checkbox"/> Examination fee If International preliminary examination report prepared by USPTO and all claims satisfy provisions of PCT Article 33(1)-(4)..... \$100 All other situations..... \$200				\$ 200.00	
23. <input checked="" type="checkbox"/> Search fee Search fee (37 CFR 1.445(a)(2)) has been paid on the international application to the USPTO as an International Searching Authority..... \$100 International Search Report prepared and provided to the Office..... \$400 All other situations..... \$500				\$ 100.00	
TOTAL OF 21, 22 and 23 =				\$ 600.00	
<input type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing or computer program listing filed in an electronic medium). The fee is \$250 for each additional 50 sheets of paper or fraction thereof.					
Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof (round up to a whole number)	RATE		
- 100 =	/50 =		x \$250	\$ 0.00	
Surcharge of \$130.00 for furnishing the oath or declaration later than 30 months from the earliest claimed priority date (37 CFR 1.492(e)).				\$ 0.00	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE	\$	
Total claims	22 - 20 =	2	x \$ 50	\$ 100.00	
Independent claims	3 - 3 =	0	x \$200	\$ 0.00	
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ \$360	\$ 0.00	
TOTAL OF ABOVE CALCULATIONS =				\$ 700.00	
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Fees above are reduced by 1/2.				350.00	
SUBTOTAL =				\$ 350.00	
Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492(f)).				\$ 0.00	
TOTAL NATIONAL FEE =				\$ 350	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property				\$ 40.00	
TOTAL FEES ENCLOSED =				\$ 390.00	
				Amount to be refunded:	\$
				Amount to be charged:	\$ 390.00
<p>a. <input type="checkbox"/> A check in the amount of \$ _____ to cover the above fees is enclosed.</p> <p>b. <input checked="" type="checkbox"/> Please charge my Deposit Account No. <u>17-0055</u> in the amount of \$ <u>390.00</u> to cover the above fees. A duplicate copy of this sheet is enclosed.</p> <p>c. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. <u>17-0055</u>. A duplicate copy of this sheet is enclosed.</p> <p>d. <input type="checkbox"/> Fees are to be charged to a credit card. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p>					
<p>NOTE: Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the International Application to pending status.</p>					
<p>SEND ALL CORRESPONDENCE TO:</p> <p>Robert D. Atkins QUARLES &amp; BRADY STREICH LANG LLP One Renaissance Square Two North Central Avenue Phoenix, AZ 85004</p>					
				<p></p> <p>SIGNATURE</p> <p>Robert D. Atkins</p> <p>NAME</p> <p>34,288</p> <p>REGISTRATION NUMBER</p>	

# **EXHIBIT B**



EV 667329735 US



UNITED STATES POSTAL SERVICE®

Customer Copy  
Label 11-F, April 2004

Post Office To Addressee

ORIGIN (POSTAL SERVICE USE ONLY)				DELIVERY (POSTAL USE ONLY)			
PO ZIP Code 85034	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day	Postage \$ 17.85		Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Date Accepted 04/12/05	Scheduled Date of Delivery Month 4 Day 11	Return Receipt Fee \$		Mo. Day		Employee Signature	
Mo. Day Year	Scheduled Time of Delivery <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	COD Fee	Insurance Fee	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Time Accepted <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM 1945	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 15.05		Mo. Day		Employee Signature	
Flat Rate <input type="checkbox"/> or Weight 11.7 lbs.	Int'l Alpha Country Code	Acceptance Emp. Initials el		<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Mail Only) Additional merchandise insurance and signature of addressee is requested. If delivery is to be made without obtaining signature of addressee or addressee's agent, delivery employee judges that article can be left in secure location and authorized delivery employee's signature constitutes valid proof of delivery.			
CUSTOMER USE ONLY				NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday			
METHOD OF PAYMENT: Express Mail Corporate Acct. No.				Federal Agency Acct. No. or Postal Service Acct. No.			
FROM: (PLEASE PRINT) CHARLES & BRADY STREICH LANG 2000 CENTRAL AVE FL 3 RENAISSANCE ONE PHOENIX AZ 85004-4458 RATKINS 112624.00029				TO: (PLEASE PRINT) COMMISSIONER OF PATENTS PO BOX 1450 ALEXANDRIA VA 22313-1450 MAIL STOP: PCT RO/US			
FOR PICKUP OR TRACKING: Visit <a href="http://www.usps.com">www.usps.com</a> or Call 1-800-222-1811				EMS			

# **EXHIBIT C**

JC10 Rec'd PCT/PTO 12 APR 2005

10/531159

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

The following documents have been received:

EV667329735US - Certificate of Mailing; Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission under 35 U.S.C. 371 (2 pages); Preliminary Amendment (3 pages); Applicant Data Sheet (3 pages); Declaration (4 pages); Power of Attorney (4); Assignments (4), along with Recordation Form Cover Sheet; Verification Statement; Sequence Listing (28 pages); Diskette with copy of Sequence Listing; and return postcard.

Applicant :	Keim, Paul S.; Pearson, Talima; Price, Lance B.; B
Serial No. :	Pending
Patent No. :	N/A
Title:	Molecular Signatures and Assay for Fluoroquinolone Resistance in Bacillus Anthracis
Date:	4/11/2005
Our File:	112624.00029
Attorney:	RATKINS
Secretary:	MONEILL

QBSL IP Dept.

Received on 4/26/05

Docket for Copy to MKE (P)

# **EXHIBIT D**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*

---

**AFFIDAVIT OF ROBERT D. ATKINS**

---

I, ROBERT D. ATKINS, hereby and declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I am a Patent Attorney with the law firm of Quarles & Brady Streich Lang LLP located in Phoenix, Arizona.
4. On April 11, 2005, I reviewed and signed the transmittal documents required for filing of the above patent application with the U.S. Patent and Trademark Office.
5. On April 11, 2005, I personally transferred custody of the patent application and transmittal documents to Maritza O'Neill for filing with the U.S. Patent and Trademark Office.

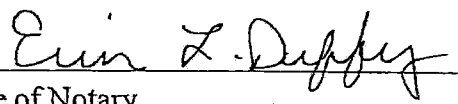
Signed under penalty of perjury this 23 day of May, 2005.

  
ROBERT D. ATKINS

STATE OF ARIZONA       )  
COUNTY OF MARICOPA   )

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that ROBERT D. ATKINS, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of MAY, 2005.

  
Signature of Notary



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*

---

**AFFIDAVIT OF WILLIAM BILYK**

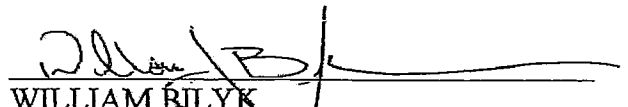
---

I, WILLIAM BILYK, hereby declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I have been employed by Intellequick Delivery, located in Phoenix, Arizona, for approximately 1-1/2 years.
4. I am currently assigned full-time to provide mail room services for Quarles & Brady Streich Lang LLP, Two North Central Avenue, Phoenix, Arizona.
5. I am responsible for processing and overseeing deliveries and pickups of all mail and other courier services for Quarles & Brady, including all Express Mail packages for delivery to the U.S. Post Office.
6. I was on duty performing my routine job functions on April 11 and April 12, 2005.
7. It is my practice to place all Express Mail package given to me in a designated bin which resides in my work area under my control and custody for pickup by an Intelliquick courier.
8. There is one scheduled mail pickup by an Intelliquick courier between 6:00 p.m. and 6:30 p.m. each business day.
9. On April 11, 2005, all Express Mail packages in my custody were picked up by John Mitchell between 6:00 p.m. and 6:30 p.m. Arizona time for delivery to the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026.
10. On April 12, 2005, all Express Mail packages in my custody were picked up by John Mitchell between 6:00 p.m. and 6:30 p.m. Arizona time for delivery to the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026.

11. Other than noted above, there were no pickups of Express Mail packages in my custody from the above business offices of Quarles & Brady for delivery to the U.S. Post Office on April 11 or April 12, 2005.

Signed under penalty of perjury this 23<sup>rd</sup> day of May, 2005.

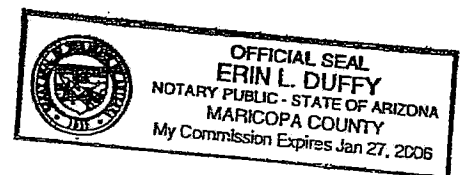
  
WILLIAM BILYK

STATE OF ARIZONA     )  
COUNTY OF MARICOPA )

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that WILLIAM BILYK, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23<sup>rd</sup> day of May, 2005.

  
Signature of Notary



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*

---

AFFIDAVIT OF MARITZA O'NEILL

---

I, MARITZA O'NEILL, hereby and declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.

3. I am a Patent Assistant employed by Quarles & Brady Streich Lang LLP located at Two North Central Avenue in Phoenix, Arizona.

4. As part of my duties, I prepare and process documents required for filing patent applications with the U.S. Patent and Trademark Office (USPTO). I am responsible for preparing and processing all patent applications which are filed by Quarles & Brady from its Phoenix offices. It is my practice to file all patent applications with the USPTO using Express Mail.

5. On April 11, 2005, I received the above identified patent application from Robert Atkins, with his instructions to file the patent application with the USPTO on that same day. On April 11, 2005, I prepared transmittal documents required for filing the above patent application with the USPTO. One of the transmittal documents that I prepared was a Certification of Mailing under 37 C.F.R. 1.10. The Certificate of Mailing includes the statement that "I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450". I signed the Certificate of Mailing on April 11, 2005 and placed the above patent application and transmittal documents, including the Certificate of Mailing in an Express Mail envelope having Express Mail Label No. EV667329735US, see attached Certificate of Mailing, dated April 11, 2005 and bearing my signature. The addressee on the Express Mail envelope was the USPTO.

6. On April 11, 2005, I personally sealed the Express Mail package containing the above patent application and transmittal documents, including the Certificate of Mailing dated April 11, 2005 and bearing my signature.

7. On April 11, 2005, before 4:30 p.m. Arizona time, I personally delivered the above Express Mail package containing the above patent application directly into the custody of William Bilyk of Intelliquick with instructions to deliver the Express Mail package to the U.S. Post Office on the same day.

8. Mr. Bilyk acknowledged receipt of the above Express Mail package and placed the Express Mail package in the bin designed for same day delivery to the U.S. Post Office.

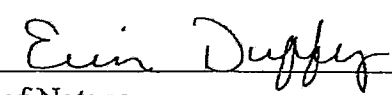
Signed under penalty of perjury this 23 day of May, 2005.

  
MARITZA O'NEILL

STATE OF ARIZONA     )  
COUNTY OF MARICOPA   )

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that MARITZA O'NEILL, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of MAY, 2005.

  
Signature of Notary



**EXPRESS MAIL CERTIFICATE: EV667329735US**

I hereby certify that this correspondence listed below is being deposited with the United States Postal Service on the date set forth below as Express Mail in an envelope addressed to: Mail Stop PCT RO/US, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date of Signature  
and Deposit: April 11, 2005

By:

(Signature of person depositing mail)

MARITZA O'NEILL

**CERTIFICATE OF MAILING PURSUANT TO 37 C.F.R. 1.10**

Applicant : Paul S. Keim *et al.*  
Serial No. : To be assigned  
Date of Filing : April 11, 2005  
Title : *MOLECULAR SIGNATURE AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*  
Art Unit : To be assigned  
Examiner : To be assigned  
Docket No. : 112624.00029

Mail Stop: PCT RO/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Type of Filing:

- 1) Transmittal Letter to the United States Designated/Elected Office (DO/EO/US)  
Concerning a Filing Under 35 U.S.C. 371 (2 pages) (in duplicate)
- 2) Preliminary Amendment (3 pages)
- 3) Application Data Sheet (3 pages)
- 4) Executed Declaration (4 pages)
- 5) Executed Power of Attorney (4)
- 6) Assignments (4), plus Recordation Form Cover Sheet
- 7) Verification Statement (1)
- 8) Paper copy of Sequence Listing (28 pages)
- 9) Diskette with copy of Sequence Listing
- 10) Return postcard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul S. Keim *et al.*

Application No.: 10/531,159

Title: *MOLECULAR SIGNATURES AND ASSAY FOR FLUOROQUINOLINE  
RESISTANCE IN BACILLUS ANTHRACIS*

---

AFFIDAVIT OF JOHN MITCHELL

---

I, JOHN MITCHELL, hereby certify and declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I have been an employee of Intellequick Delivery, located in Phoenix, Arizona, for approximately 1 year.
4. My duties include the pickup of all mail, including Express Mail packages, from various businesses each business day and deliver all such mail to the U.S. Post Office on the same business day.
5. My route includes the pickup of all mail, including Express Mail packages, from the business offices of Quarles & Brady Streich Lang LLP located at Two North Central Avenue, Phoenix, Arizona.
6. My scheduled pick up at the above business offices of Quarles & Brady occurs between 6 p.m. and 6:30 p.m. each business day.
7. It is my practice to maintain a daily manifest of all pickups and deliveries, including times and locations.
8. On April 11, 2005, I personally picked up all mail, including Express Mail packages from the designated bin maintained under the custody of William Bilyk, at the above business offices of Quarles & Brady at 6:07 p.m. Arizona time, as shown on the attached copy of my manifest for April 11, 2005.
9. On April 11, 2005, I personally delivered all mail, including Express Mail packages, which I had picked up from Quarles & Brady, directly to an employee of the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026. The delivery to the above U.S. Post

Office occurred at 6:56 p.m. Arizona time on that day, as shown on the attached copy of my manifest for April 11, 2005.

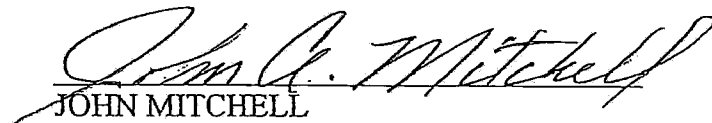
10. On April 12, 2005, I personally picked up all mail, including Express Mail packages from the designated bin maintained under the custody of William Bilyk, at the above business offices of Quarles & Brady at 6:08 p.m. Arizona time, as shown on the attached copy of my manifest for April 12, 2005.

11. On April 12, 2005, I personally delivered all mail, including Express Mail packages, which I had picked up from Quarles & Brady, directly to an employee of the U.S. Post Office located at 4949 E. Van Buren, Phoenix, Arizona 85026. The delivery to the above U.S. Post Office occurred at 6:58 p.m. Arizona time on that day, as shown on the attached copy of my manifest for April 12, 2005.

12. The above noted entries in my manifest were made by my hand on April 11 and April 12, 2005.

13. On April 11 and April 12, 2005, except as noted above, I made no pickups of mail, including Express Mail packages, from the above business offices of Quarles & Brady.

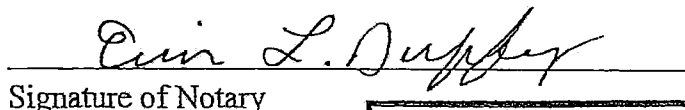
Signed under penalty of perjury this 23<sup>RD</sup> day of May, 2005.

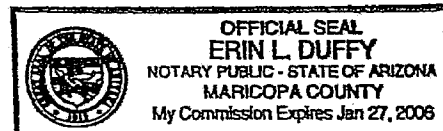
  
JOHN MITCHELL

STATE OF ARIZONA       )  
COUNTY OF MARICOPA   )

I, Erin Duffy, a Notary Public in and for the County and State aforesaid, do hereby certify that JOHN MITCHELL, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23<sup>rd</sup> day of May, 2005.

  
Signature of Notary





# **EXHIBIT E**

# INVOICE

602-32

Driver: J. MITCHELL IC#: 164054 Date: 11/11/05 Page 1 of 1

Name - address - contact		Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
1 30412511	3416 N. 24th St.	9:38	D	<input type="checkbox"/> On Del	7.81	
Time due:	Delivery	Rec'd by:	GARCIA			
12:17	2390 E. PARK 140	10:15	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
2 30413017	41350 E. PARK 140	10:40	D	<input type="checkbox"/> On Del	7.81	
Time due:	Delivery	Rec'd by:	L. D. WIT			
11:20	2 N. CNT 2200	11:17	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
3 30413918	2390 E. PARK 140	10:18	D	<input type="checkbox"/> On Del	7.81	
Time due:	Delivery	Rec'd by:	LEONARD			
11:44	2801 E. CNT 100	11:00	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
4 30413913	41350 E. PARK 140	10:39	D	<input type="checkbox"/> On Del	7.81	
Time due:	Delivery	Rec'd by:	P. P. D. S.			
11:54	4041 N. CNT D100	10:55	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
5 30414011	11320	11:07	D	<input type="checkbox"/> On Del	10.91	
Time due:	Delivery	Rec'd by:	D. C. A. C.			
10:00		11:09	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
6 30413021	11320	11:20	D	<input type="checkbox"/> On Del	14.17	
Time due:	Delivery	Rec'd by:	FILED			
12:15	5222 W. GLEN	12:19	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
7 30413011	5222 W. GLEN	12:47	D	<input type="checkbox"/> On Del	7.41	
Time due:	Delivery	Rec'd by:	HERREIRA			
16:15		4:15	Print Last Name	BILYK		
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
8 30413009	11335	11:35	D	<input type="checkbox"/> On Del	14.17	
Time due:	Delivery	Rec'd by:	SMITH			
14:47	5611 N. 54th Ave	14:57	Print Last Name			
Reference #	Pickup	P	<input type="checkbox"/> On P/U			
9 30414021	12 N. 45th Ave	12:51	D	<input type="checkbox"/> On Del	8.09	
Time due:	Delivery	Rec'd by:	MARK			
16:00		2:27	Print Last Name			

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

# INVOICE

DISPATCH  
602-323-4000

Driver: J. MITCHELL IC#: 104054 Date: 4-11-05 Page 1 of 1

Name - address - contact			Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
1 304501	4101 R. & VAN 2025 N. 35TH 260	11:59	D	<input type="checkbox"/> On Del	8.00		
Time due:	DELIVER'S HANDKICK 3023 N. 35TH 140	2:05	Delivery	Rec'd by:	12:10		
				Print Last Name	Howe		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
2 304502	P. RADIAT C/H 751 1501 5TH AVE 400	7:14	D	<input type="checkbox"/> On Del	7.57		
Time due:	D. NORFOLK ST. 1 2001 10TH AVE 100	11:32	Delivery	Rec'd by:	13:40		
				Print Last Name	O DEPOSIT		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
3 304503	P. CORP. BIEHAN #209 550 N. CENT. 1800	12:19	D	<input type="checkbox"/> On Del	8.28		
Time due:	D. NORFOLK ST. 1 2001 10TH AVE 100	2:27	Delivery	Rec'd by:			
				Print Last Name	D. DUNN		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
4 304504	P. RADIAT VENDOR #123 316 E. FLORENCE ST. 1100	1:31	D	<input type="checkbox"/> On Del	6.09		
Time due:	D. NORFOLK ST. 1 2001 10TH AVE 100	16:50	Delivery	Rec'd by:	13:41		
				Print Last Name	O DEPOSIT		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
5 304505	P. NORFOLK ST 2398 E. CHURCH 1ST FL 2:34	2:34	D	<input type="checkbox"/> On Del	8.10		
Time due:	D. GUNNICH PHARM. 333 E. VIRGINIA 126	13:08	Delivery	Rec'd by:	HERRERA		
				Print Last Name	M. D. L.		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
6 304506	P. RADIAT. 13K 6001 N. 24TH B	7:14	D	<input type="checkbox"/> On Del	14.90		
Time due:	D. RADIAT. 13K 6001 N. 24TH B	13:12	Delivery	Rec'd by:	10:00		
				Print Last Name	W. S. Williams		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
7 304507	P. COLE CO. 1ST 2555 E. CHURCH 400	14:00	D	<input type="checkbox"/> On Del	11.31		
Time due:	D. RADIAT. 13K 6001 N. 24TH B	14:12	Delivery	Rec'd by:	15:37		
				Print Last Name	HERRERA		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
8 304508	P. CH. TE. 12K 2415 E. CHURCH 100	15:53	D	<input type="checkbox"/> On Del	13.41		
Time due:	D. DIAMOND STEEL 212 325 AVE	16:03	Delivery	Rec'd by:	Jim RALSTON		
				Print Last Name	Jim RALSTON		
Reference #	Pickup	P		<input type="checkbox"/> On P/U			
9 304509	P. 4201 R. VAN COTT 2025 N. 35TH 260	14:20	D	<input type="checkbox"/> On Del	10.54		
Time due:	D. SUPERIOR CORP 4:54		Delivery	Rec'd by:			
				Print Last Name	FILED A DEL		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

# INVOICE

DISPATCH

602-323-4000

Driver: J. MITCHELL IC#: 164054 Date: 4.11.05 Page 3 of

Reference #	Name - address - contact	Time of:	Pickup	Waiting: Collect \$:	Rate:	Remarks:
3044742	P SUPERIOR CT.	5:07	P	<input type="checkbox"/> On P/U		
Time due:	D 94 B	5:30	D	<input type="checkbox"/> On Del	13.40	
17:55						Rec'd by: BILYK
3044742	P 94 B	4:40	P	<input type="checkbox"/> On P/U		
Time due:	D SUPERIOR CT	4:50	D	<input type="checkbox"/> On Del	13.40	
17:25						Rec'd by: BILYK
3044657	P SUPERIOR CT.	4:54	P	<input type="checkbox"/> On P/U		
Time due:	D SUPERIOR CT	5:07	D	<input type="checkbox"/> On Del	13.40	
12:00						Rec'd by: BILYK
3044807	P 94 B	4:40	P	<input type="checkbox"/> On P/U		
Time due:	D SUPERIOR COURT	6:07	D	<input type="checkbox"/> On Del	13.40	
17:40						Rec'd by: BILYK
3044812	P 94 B	4:40	P	<input type="checkbox"/> On P/U		
Time due:	D DISTRICT COURT	6:05	D	<input type="checkbox"/> On Del	13.40	
18:50						Rec'd by: BILYK
3041210	P 94 B	6:07	P	<input type="checkbox"/> On P/U		
Time due:	D DISPO	6:54	D	<input type="checkbox"/> On Del	10.08	
19:00						Rec'd by: BILYK
3040947	P 3 A W	6:15	P	<input type="checkbox"/> On P/U		
Time due:	D FEDEX	6:56	D	<input type="checkbox"/> On Del	18.27	
18:30						Rec'd by: BILYK
3040947	P 3 A W	6:15	P	<input type="checkbox"/> On P/U		
Time due:	D DISPO	6:56	D	<input type="checkbox"/> On Del	14.68	
19:00						Rec'd by: BILYK
3044862	P 94 B	6:07	P	<input type="checkbox"/> On P/U		
Time due:	D DISPO (AIRPORT)	6:30	D	<input type="checkbox"/> On Del	16.43	
18:30						Rec'd by: BILYK

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.



# INVOICE

DISPATCH  
602-323-4000

Driver: J. MITCHELL IC#: 164054 Date: 4-12-05 Page 7 of 7

Reference #	Name - address - contact	Time of:	Pickup	Waiting:	Collect \$:	Rate:	Remarks:
3041340	P. B. K. A. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. 3.4 W.		Delivery	Rec'd by:			
12:00		11:40		Print Last Name	HECKTOR		
Reference #	P. L. N. D. A. M. I. R. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. 12.5		Delivery	Rec'd by:			
12:15	210 E. CARLL DR.	11:20		Print Last Name	DELIVERED		
Reference #	P. K. S. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. L. A. D. A. M. I. R. ...		Delivery	Rec'd by:			
14:10	#310	11:32		Print Last Name	WOODS		
Reference #	P. 3.4 W.		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. B. K. ...		Delivery	Rec'd by:			
12:30		12:25		Print Last Name	DELIVERED		
Reference #	P. B. K. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. 3.4 W.		Delivery	Rec'd by:			
13:00		12:34		Print Last Name	O. P. U.		
Reference #	P. S. E. C. O. F. S. T. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. 3.4 W.		Delivery	Rec'd by:			
13:07		12:07		Print Last Name	DELIVERED		
Reference #	P. S. E. C. O. F. S. T. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. 3.4 W.		Delivery	Rec'd by:			
15:10		12:25		Print Last Name	HECKTOR		
Reference #	P. B. A. K. V. H. E. N. D. I. N. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. B. A. K. V. H. E. N. D. I. N. ...		Delivery	Rec'd by:			
14:00	1331 N. 7 ST. 350	12:54		Print Last Name	MARKER		
Reference #	P. L. E. G. A. L. V. I. D. E. O. S. P. E. C. ...		P	<input type="checkbox"/> On P/U			
			D	<input type="checkbox"/> On Del			
Time due:	D. B. A. K. V. H. E. N. D. I. N. ...		Delivery	Rec'd by:			
13:30		12:25		Print Last Name	B. A. K. V. H. E. N. D. I. N.		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

# INVOICE

DISPATCH  
602-323-4000

Driver: J. MITCHELL IC#: 17 4654 Date: 11.12.15 Page 1 of 1

Name - address - contact		Time of:	Waiting:	Collect \$:	Rate:	Remarks:
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
1 <u>3041701</u>	<u>PHILIPPS DODGE</u>	<u>7:00</u>	D	<input type="checkbox"/> On Del	<u>10.75</u>	
Time due:	D <u>5:40</u>	Delivery	Rec'd by:	<u>Mitchell</u>		
<u>13:30</u>		<u>7:57</u>	Print Last Name	<u>Mitchell</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
2 <u>3041701</u>	<u>3.70</u>	<u>7:15</u>	D	<input type="checkbox"/> On Del	<u>10.94</u>	
Time due:	D <u>11:00</u>	Delivery	Rec'd by:	<u>LEC</u>		
<u>13:07</u>		<u>7:45</u>	Print Last Name	<u>POSTED</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
3 <u>3041701</u>	<u>115001 CT</u>	<u>7:47</u>	D	<input type="checkbox"/> On Del	<u>10.94</u>	
Time due:	D <u>5:40</u>	Delivery	Rec'd by:			
<u>14:08</u>		<u>7:54</u>	Print Last Name	<u>HECTOR</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
4 <u>3041701</u>	<u>3.70</u>	<u>7:15</u>	D	<input type="checkbox"/> On Del	<u>10.94</u>	
Time due:	D <u>5:40</u>	Delivery	Rec'd by:			
<u>15:06</u>		<u>7:30</u>	Print Last Name	<u>DELIVERED</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
5 <u>3041701</u>	<u>BR 1</u>		D	<input type="checkbox"/> On Del	<u>7.31</u>	
Time due:	D <u>5:40</u>	Delivery	Rec'd by:			
<u>12:00</u>		<u>4:30</u>	Print Last Name	<u>O.P.U</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
6 <u>3041701</u>	<u>5.70</u>		D	<input type="checkbox"/> On Del	<u>7.31</u>	
Time due:	D <u>BR 1</u>	Delivery	Rec'd by:			
<u>11:30</u>		<u>4:15</u>	Print Last Name	<u>O.P.U</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
7 <u>3041701</u>	<u>5.70</u>	<u>4:15</u>	D	<input type="checkbox"/> On Del	<u>10.94</u>	
Time due:	D <u>CLINICAL REC.</u>	Delivery	Rec'd by:			
<u>17:00</u>		<u>4:50</u>	Print Last Name	<u>RECORDED</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
8 <u>3041701</u>	<u>CLINICAL REC.</u>	<u>4:30</u>	D	<input type="checkbox"/> On Del		
Time due:	D <u>5.70</u>	Delivery	Rec'd by:			
<u>18:00</u>		<u>5:30</u>	Print Last Name	<u>HECTOR</u>		
Reference #	P	Pickup	P	<input type="checkbox"/> On P/U		
9 <u>3041701</u>	<u>5.70</u>	<u>4:15</u>	D	<input type="checkbox"/> On Del	<u>10.94</u>	
Time due:	D <u>CLINICAL REC.</u>	Delivery	Rec'd by:			
<u>17:03</u>		<u>5:20</u>	Print Last Name	<u>FILED</u>		

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.

# INVOICE

DISPATCH  
602-323-4000

Driver: J MITCHELL IC#: 1611054/ Date: 4.12.05 Page 4 of 4

Reference #	Name - address - contact	Time of:	Waiting	Collect	Rate	Remarks
1 3048401	3048401 CT	Pickup	P	<input type="checkbox"/> On P/U		
		5:20	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 57W	Delivery	Rec'd by:			
18:03		5:30	Print Last Name	HECTOR		
2 3048401	3048401	Pickup	P	<input type="checkbox"/> On P/U		
		4:15	D	<input type="checkbox"/> On Del	11.40	
Time due:	D 300 OF ST	Delivery	Rec'd by:			
17:03		4:25	Print Last Name	LOVED		
3 3048401	3048401	Pickup	P	<input type="checkbox"/> On P/U		
		4:25	D	<input type="checkbox"/> On Del	11.40	
Time due:	D 57W	Delivery	Rec'd by:			
18:04		5:30	Print Last Name	HECTOR		
4 3045071	3045071	Pickup	P	<input type="checkbox"/> On P/U		
		20	D	<input type="checkbox"/> On Del	14.62	
Time due:	D 115PO	Delivery	Rec'd by:			
19:00		6:42	Print Last Name	DEL		
5 3045101	3045101	Pickup	P	<input type="checkbox"/> On P/U		
		6:20	D	<input type="checkbox"/> On Del	18.28	
Time due:	D 115PO	Delivery	Rec'd by:			
18:30		6:40	Print Last Name	DEL		
6 3045345	3045345	Pickup	P	<input type="checkbox"/> On P/U		
		6:08	D	<input type="checkbox"/> On Del	10.08	
Time due:	D 115PO	Delivery	Rec'd by:			
19:00		6:58	Print Last Name	DEL		
7 3048401	3048401	Pickup	P	<input type="checkbox"/> On P/U		
		5:58	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 115PO	Delivery	Rec'd by:			
19:01		7:02	Print Last Name	POSTED		
8 3048401	3048401	Pickup	P	<input type="checkbox"/> On P/U		
		7:02	D	<input type="checkbox"/> On Del	10.94	
Time due:	D 57W	Delivery	Rec'd by:			
10:00			Print Last Name			
9		Pickup	P	<input type="checkbox"/> On P/U		
			D	<input type="checkbox"/> On Del		
Time due:	D	Delivery	Rec'd by:			
			Print Last Name			

Claims of any kind must be made in writing within 14 days of delivery, or shall be deemed waived by the shipper.



# **EXHIBIT F**



## Track & Confirm

### Shipment Details

You entered EV66 7329 735U S

Your item was delivered at 10:41 am on April 14, 2005 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by S DYAR.

Here is what happened earlier:

- ARRIVAL AT UNIT, April 14, 2005, 7:41 am, DULLES, VA 20102
- ENROUTE, April 13, 2005, 10:51 pm, DULLES, VA 20102
- ENROUTE, April 12, 2005, 6:54 pm, SCOTTSDALE, AZ 85255
- ACCEPTANCE, April 12, 2005, 5:05 pm, PHOENIX, AZ 85026

### Notification Options

▶ Track & Confirm by email [What is this?](#)

Go >

▶ Request Proof of Delivery [What is this?](#)

Go >



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Preserving the Trust

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### Track & Confirm

Enter label number:

FAQ

Track & Confirm FAQs

Go >

# **EXHIBIT G**



May 27, 2005

Robert Atkins  
Quarles and Brady Streich Lang  
2 North Central Ave  
Phoenix, Arizona 85004-4458

Dear Mr. Atkins:

After further review of your express mail piece number EV667329735US I have determined that this mailing was dropped off at our Main Post Office on April 11, 2005 not April 12, 2005 as indicated by the Express Mail Label. This mail piece had a next day delivery service standard and should have reached its destination in Alexandria Virginia on April 12, 2005. I apologize for the delay. If you have any further questions please do not hesitate to contact me at 602-225-3993.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Thomas".

Melanie Thomas  
Customer Relations Coordinator (acting)

# **EXHIBIT H**



Robert D. Atkins  
Quarles & Brady Streich Lang LLP  
One Renaissance Square  
Two North Central Avenue  
Phoenix, AZ 85004

In re Application of	:	
Keim et al.	:	
Serial No. : 10/531,159	:	DECISION ON
PCT No.: PCT/US03/32887	:	
Int. Filing Date: 11 October 2003	:	PETITION UNDER
Priority Date: 11 October 2002	:	
Attorney's Docket No.: 112624.00029	:	37 CFR 1.10(d)
For: MOLECULAR SIGNATURE AND ASSAY FOR	:	
FLUOROQUINOLINE RESISTANCE IN <i>BACILLUS</i>	:	
<i>ANTHRACIS</i>	:	

This decision is in response to the “PETITION TO CORRECT A FILING DATE PRUSUANT TO 37 C.F.R. § 1.10(d)” filed 09 June 2005, requesting the Office to correct the national stage filing date.

## BACKGROUND

On 11 October 2003, applicants filed international application PCT/US03/32887 that claimed priority of an earlier U.S. provisional application filed 11 October 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 02 December 2004. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 11 April 2005.

On 12 April 2005, applicants filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, a declaration and the basic national fee of \$300. These papers were assigned U.S. Serial No. 10/531,159.

On 09 June 2005, applicants filed the current petition requesting that the above-identified application be accorded a national stage filing date of 11 April 2005.

DISCUSSION

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1) and (2).

✓ With respect to item (3), the Express Mail Label and the tracking information on the United States Postal Service website both indicate that the package was accepted on 12 April 2005. In order to refute this as the date of mailing, applicant has filed affidavits of Robert D. Atkins, William Bilyk, Maritza O'Neill and John Mitchell, along with a letter from Melanie Thomas of the United States Postal Service. Mr. Atkins states that he gave the package to Maritza O'Neill for filing with the USPTO. Ms. O'Neill states that she personally gave the package to Mr. Bilyk with instructions to mail the package the same day. She also states that Mr. Bilyk acknowledged receipt on that day, and placed the package in a bin designed for same day delivery to the United States Postal Service. Mr. Bilyk states that all packages were picked up by Mr. Mitchell on both the 11 April 2005 and the 12 April 2005 for delivery to the post office. Mr. Mitchell states that he picked up packages on both days and delivered the packages to the post office. Ms. Thomas states that upon further review, she had determined that the package was dropped off on 11 April 2005, and not the 12 April 2005.

Petitioner has not provided sufficient evidence from the USPS, as required under the rule. Specifically, Ms. Thomas fails to set forth the factual basis upon which her conclusion is based. If her conclusion was based on evidence provided to her by the law firm, then such would not constitute independent corroborating evidence.

Therefore, the application is abandoned.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

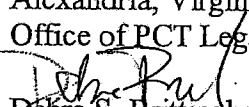
A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by (1) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) a proper reply unless it has been previously submitted, and (3) the petition fee required by law for revival of an unintentionally abandoned application (1.17(m)). In this instance, the fee required by law for revival of an unintentionally abandoned application is \$1500. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

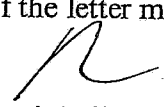
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of a grantable petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the entire delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a grantable petition for revival under 37 CFR 1.137(b).

#### CONCLUSION

Applicant's petition to correct the national stage filing date to 12 April 2005 is hereby **DISMISSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

  
Debra S. Brittingham  
PCT Special Programs Examiner  
Office of PCT Legal Administration

  
Boris Milef  
PCT Legal Examiner  
Office of PCT Legal Administration

Telephone: (571) 272-3280  
Facsimile: (571) 273-0459



# EXHIBIT I

21 JUN 2006



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Robert D Atkins  
quarles & Brady Streich Lang  
One Renaissance Square  
Two North Central Avenue  
Phoenix AZ 85004

In re Application of :  
KEIM et al. : DECISION  
Application No.: 10/531,159 :  
PCT No.: PCT/US03/32887 :  
Int. Filing Date: 14 October 2003 :  
Priority Date: 11 October 2002 :  
Attorney's Docket No.: 112624.00029 :  
For: MOLECULAR SIGNATURE AND ASSAY :  
FOR FLUOROQUINOLINE RESISTANCE IN :  
BACILLUS ANTHRACIS :

This decision is in response to applicants' renewed petition under 37 CFR 1.10(d) filed on 03 March 2006.

**BACKGROUND**

On 14 October 2003, applicants filed international application PCT/US03/32887, which designated the U.S. and claimed a priority date of 11 October 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 02 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 April 2005 (29 January 2005 being a Saturday).

On 12 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 June 2005, applicants filed a petition under 37 CFR 1.10(d) requesting that the papers filed in the submission for entry into the national stage be accorded a date of 11 April 2005 rather than 12 April 2005.

On 27 September 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS

112624.00029

QBSL IP Dept.

Received on 10-26-06  
Docket for CCIMKE (18)

provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 19 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America as per the decision mailed 27 September 2005.

On 03 March 2006, applicants filed the instant renewed petition under 37 CFR 1.10(d).

### DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 12 April 2005. The "Express Mail" label number EV667329735US is shown on the Transmittal Letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "041205".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 27 September 2005, a satisfactory showing has been made under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicants still have not provided a satisfactory showing. 37 CFR 1.10(d)(3) requires any showing "be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the

'Express Mail Post Office to Addressee' service of the USPS." As to this type of evidence, applicants have provided a letter from the USPS and a courier log from the courier who picked up the package at the law firm and delivered it to the USPS. Regarding the letter, as noted in the decision mailed 27 September 2005, the letter fails to set forth the factual basis on which the conclusion was based and that if her conclusion was based on evidence provided to her by the law firm, then it would not constitute independent corroborating evidence.

As to the courier log, it appears to be intended to satisfy what MPEP § 513 indicates is an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). The relevant portion of MPEP § 513 states:

... a notation in a log book, entered after deposit by the person who deposited the correspondence as "Express Mail" within one business day of such deposit, setting forth *the items indicated above*, would be deemed on petition to be an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). (emphasis added)

The "items indicated above" are

... a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

The document provided by applicant includes the date and time of deposit. However, it does not appear to include any of the other information. In particular, it does not include the "Express Mail" mail number, any file identification number, or the date and time of entry in the log. Without the "Express Mail" mail number and file identification number, it is not clear how one is to reliably identify the package at issue. Without the date and time of entry in the log, it is not clear if the log came into being within one business day after deposit.

### CONCLUSION

For the reasons set forth above, applicant's renewed petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459

# **EXHIBIT J**



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

06 DEC 2006

Robert D Atkins  
Quarles & Brady Streich Lang  
One Renaissance Square  
Two North Central Avenue  
Phoenix AZ 85004

In re Application of	:	
KEIM et al.	:	DECISION
Application No.: 10/531,159	:	
PCT No.: PCT/US03/32887	:	
Int. Filing Date: 14 October 2003	:	
Priority Date: 11 October 2002	:	
Attorney's Docket No.: 112624.00029	:	
For: MOLECULAR SIGNATURE AND ASSAY	:	
FOR FLUOROQUINOLINE RESISTANCE IN	:	
BACILLUS ANTHRACIS	:	

This decision is in response to applicants' renewed petition under 37 CFR 1.10(d) filed on 21 August 2006. The renewed petition states that "Applicants maintain that the USPTO has not properly considered all evidence, and seek to invoke the supervisory authority of the Office of the Director to reconsider the relevant facts in support of its position." This statement has been construed as a request for supervisory review.

## BACKGROUND

On 14 October 2003, applicants filed international application PCT/US03/32887, which designated the U.S. and claimed a priority date of 11 October 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 02 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 April 2005 (29 January 2005 being a Saturday).

On 12 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 June 2005, applicants filed a petition under 37 CFR 1.10(d) requesting that the papers filed in the submission for entry into the national stage be accorded a date of 11 April 2005 rather than 12 April 2005.

On 27 September 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from

the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 19 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America as per the decision mailed 27 September 2005.

On 03 March 2006, applicants filed a renewed petition under 37 CFR 1.10(d).

On 21 June 2006, a decision was mailed dismissing applicants' renewed petition under 37CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 21 August 2006, applicant submitted the instant renewed petition under 37 CFR 1.10(d). As noted above, applicants' request that the Office of the Director invoke its supervisory authority under 37 CFR 1.181 has been construed as a request for supervisory review.

### DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 12 April 2005. The "Express Mail" label number EV667329735US is shown on the Transmittal Letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label mailing label accompanying the petition contains the same "Express Mail" label number. The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "041205".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;



(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 27 September 2005, a satisfactory showing has been made under 37 CFR 1.10(d)(1) and (2).

The decision mailed 27 September 2005 indicated that item (3) had not been satisfied. In regard to the letter from Melanie Thomas of the United States Postal Service (USPS), that decision stated.

Petitioner has not provided sufficient evidence from the USPS, as required under the rule. Specifically, Ms. Thomas fails to set forth the factual basis upon which her conclusion is based. If her conclusion was based on evidence provided to her by the law firm, then such would not constitute corroborating evidence.

The decision also acknowledged the affidavits of Robert D. Atkins, William Bilyk, Maritza O'Neill, and John Mitchell. The decision, however, failed to address the courier log provided by applicants.

The decision mailed 21 June 2006 also indicated that item (3) had not been satisfied. That decision repeated the statement above regarding the letter from Melanie Thomas of the USPS. That decision also addressed the courier log. It stated:

As to the courier log, it appears to be intended to satisfy what MPEP § 513 indicates is an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). The relevant portion of MPEP § 513 states:

... a notation in a log book, entered after deposit by the person who deposited the correspondence as "Express Mail" within one business day of such deposit, setting forth *the items indicated above*, would be deemed on petition to be an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). (emphasis added)

The "items indicated above" are

... a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature;

and the date and time of entry in the log.

The document provided by applicant includes the date and time of deposit. However, it does not appear to include any of the other information. In particular, it does not include the "Express Mail" mail number, any file identification number, or the date and time of entry in the log. Without the "Express Mail" mail number and file identification number, it is not clear how one is to reliably identify the package at issue. Without the date and time of entry in the log, it is not clear if the log came into being within one business day after deposit.

The petition filed 21 August 2006 has been construed as requesting supervisory review of the decisions mailed 27 September 2005 and 21 June 2006.

Applicants state that the "affidavits of Maritza O'Neill and William Bilyk confirm that Express Mail EV667329735US containing the national stage patent application was placed in the Intelliquick courier pick-up bin by about 4:30 p.m. on April 11, 2005, see Exhibit D. These affidavits were made under oath and penalty of perjury and should be accepted as accurate and reliable statements." The affidavit of Maritza O'Neill refers specifically to Express Mail mailing label number EV667329735US. However, the affidavit was made six weeks after the date in question. There is nothing in the affidavit that suggests that Maritza O'Neill had any specific remembrance or recollection of that particular package. The affidavit appears to rely on the fact that the Certificate of Mailing was signed on that date by her. However, this Certificate of Mailing only establishes intent to mail it on that date, not that it was actually mailed on that date. The affidavit of William Bilyk merely states that on April 11, 2005 and April 12, 2005, all packages in his custody were picked up by John Mitchell between 6:00 and 6:30 p.m. Neither the affidavit of William Bilyk nor the affidavit of John Mitchell specifically refer to Express Mail mailing label number EV667329735US. Rather, these affidavits simply confirm that each of these persons performed their usual duties on April 11, 2005 and April 12, 2005.

The affidavit of Robert D. Atkins states that he reviewed and signed the transmittal documents and personally transferred custody of the documents to Maritza O'Neill on 11 April 2005. However, this does not establish that the documents were mailed by Express Mail on that date. Moreover, as with the affidavit of Maritza O'Neill, the affidavit was made six weeks after the date in question and appears to be based on the date of signing rather than any specific remembrance or recollection of that particular package.

Applicants also urge that the courier log is an independent and contemporaneous record, made within one business day of the deposit in question, that the Express Mail was in fact taken to the U.S. Post Office at the indicated time. However, the log does not contain any Express Mail numbers. One simply cannot determine from the log that the correspondence having Express Mail mailing label number EV667329735US was even entered in the log. Moreover, it is not clear that the courier log was made within one business day of the deposit in question. The affidavit of John Mitchell states that he "maintains a daily manifest of all pickups and deliveries,

including times and locations” but doesn’t say when the entries in the log are made. The log does not seem to be in chronological order. For example, on page 1 of the courier log for 11 April 2005, the last three entries have pickup times of 12:17, 11:35, and 12:51. Since the log is not in chronological order, it raises questions as to when the entries were made. If the entries were made before the actual pickup or the actual delivery, then it does not satisfy 37 CFR 1.10(d)(3).

Applicants also urge that the fact that the USPS records show Express Mail mailing label number EV667329735US in its possession as of 5:05 p.m. on 12 April 2005 in combination with the log establishes that Express Mail mailing label number EV667329735US was deposited with the USPS on 11 April 2005. However, as noted above, the log is not a reliable record of whether a particular Express Mail mailing label number was picked up or deposited with the USPS on any particular date.

Applicants also urge that the letter from Melanie Thomas of the USPS satisfies 37 CFR 1.10(b)(3). The petition suggests that the letter from Melanie Thomas was based on the same evidence presented in the petition under 37 CFR 1.10(d). The petition states that “the U.S. Post Office understood and accepted the evidence and acknowledged the mistake. For the USPTO to discount an official statement from the U.S. Post Office out-of-hand is improper.” However, for the reasons set forth above, the evidence is not sufficient. Thus, any conclusion based on that evidence is not reliable.

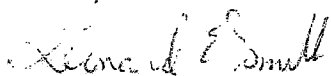
### **CONCLUSION**

For the reasons set forth above, applicant’s renewed petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled “Renewed Petition Under 37 CFR 1.10(d).” No additional petition fee is required.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Leonard Smith  
Supervisory Legal Examiner

# **EXHIBIT K**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Paul S. Keim *et al.*  
Application No. : 10/531,159  
PCT No. : PCT/US03/32887  
Int. Filing Date : 14 October 2003  
Priority Date : 11 October 2002  
Title : *MOLECULAR SIGNATURES AND ASSAY FOR  
FLUOROQUINOLINE RESISTANCE IN BACILLUS  
ANTHRACIS*  
Attorney Docket No. : 112624.00029

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**AFFIDAVIT OF JOHN MITCHELL**

---

I, JOHN MITCHELL, hereby certify and declare as follows:

1. The statements in this affidavit are true and based on my personal knowledge.
2. I am over the age of 21.
3. I have been an employee of Intellequick Delivery, located in Phoenix, Arizona, for approximately 3 years.
4. In April of 2005, my duties included the pickup of all mail, including Express Mail packages, from various businesses each business day, including the offices of Quarles & Brady, and deliver all such mail to the indicated location on the same business day.
5. It was my practice to keep a manifest of all pickups and deliveries, including times and locations.
6. When an order for pickup and delivery came in, it was common for me to write the client name/location for the order in the manifest, prior to the actual pickup. This initial entry served as a note to myself that the indicated pickup needed to be made. At the time I entered the client information for the order, I did not complete the time entry as the pickup and delivery had not been made yet.
7. I would then travel to each pickup and delivery site. Depending on the route and urgency of the order, I would make judgments as to the order of pickup and delivery. The order of pickup and delivery did not necessarily match of the order of entries in the manifest. Sometimes I would pickup or deliver an order listed further down the manifest before I would

pickup or deliver an order listed higher in the manifest. In most cases, my pickup and delivery order did not matter to the client, provided it occurred during the same business day.

8. Once I picked up or delivered the package, I would then write the actual time of pickup or delivery in the manifest. It was routine for the time entry in the manifest to be recorded at a different time, i.e., actual pickup or delivery time, as the client information entry. In some cases, a time entry for pickup or delivery order listed higher in the manifest would be later in time than a time entry for pickup or delivery order listed further down the manifest.

Signed under penalty of perjury this 6th day of February, 2007.

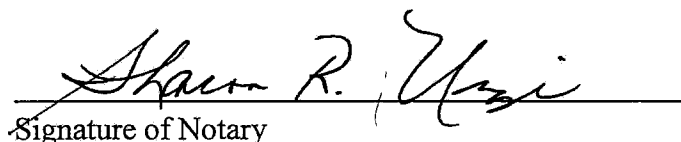
  
JOHN MITCHELL

STATE OF ARIZONA       )  
COUNTY OF MARICOPA   )

I, SHARON R. URZI, a Notary Public in and for the County and State aforesaid, do hereby certify that JOHN MITCHELL, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of February, 2007.



  
Signature of Notary